

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MATTHEW G. SILVA,) CASE NO. C04-1885-JLR-MAT
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 Plaintiff,)
)
 v.) ORDER RE: PLAINTIFF'S MOTION
) TO COMPEL
 LARRY MAYES, et al.,)
)
 Defendants.)
 _____)

Plaintiff submitted a motion to compel, seeking responses to his second set of discovery requests. (Dkt. 209.) Defendants object to plaintiff's motion. (Dkts. 214 & 216.) For the reasons described below, the Court concludes that plaintiff's motion should be denied.

The Court twice extended the discovery deadline in this matter. First, upon plaintiff's motion, the Court granted a thirty-day extension of the discovery deadline – to June 2, 2005. (Dkt. 99.) Second, following plaintiff's request for a ninety-day continuance pursuant to Federal Rule of Civil Procedure 56(f), the Court granted an additional thirty-day extension of the discovery deadline, which, at that point, extended the deadline to September 30, 2005. (Dkt. 196.) Plaintiff's request for a continuance included his desire to allow a response to a second set

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01 of discovery requests, but rested in large part on his unsuccessful attempts to conduct depositions
02 in this case. (See Dkt. 150-51.) (See also Dkt. 153 (simultaneously filed motion for contempt
03 citations addressing ongoing dispute between the parties as to deposition procedures.))

04 In its order of August 31, 2005 granting plaintiff's motion for a Rule 56(f) continuance,
05 the Court questioned whether plaintiff had diligently pursued discovery in this case and noted that
06 plaintiff's motion failed to specify what specific facts precluding summary judgment additional
07 discovery would yield. (Dkt. 196.) However, the Court nonetheless found a brief extension of
08 the discovery deadline appropriate. (*Id.*) The Court stated that no additional extensions of the
09 discovery deadline would be granted in this case and that all discovery must be completed by the
10 final discovery deadline established by the order. (*Id.*) In that same order, the Court also
11 established a deadline of October 31, 2005 for any opposition to defendants' motion for summary
12 judgment and requested supplemental briefing from the parties as to plaintiff's motion for partial
13 summary judgment. (*Id.*)

14 In support of his motion to compel, plaintiff submits copies of two letters addressed to
15 defense counsel and dated in October 2005 requesting a discovery conference regarding his second
16 set of discovery requests. (See Dkt. 210.) He maintains that the Court's August 31, 2005 order
17 essentially required defendants to answer his second set of discovery requests, and asserts that he
18 was unable to file dispositive motions due to the "missing evidence" and that the "materials sought
19 would uncover the actual intent of defendants in establishing D-unit conditions and in holding
20 plaintiff there for nearly 18 months, amongst other things." (Dkt. 218 at 2 & 4.) (See also Dkt.
21 219 at 3 (implying relevance of requested documents goes to the reasons behind the creation of
22 the more restrictive conditions in the D-Unit of the Regional Justice Center (RJC).))

01 Defendants note that, after they received plaintiff's second set of discovery requests, the
02 parties had a discovery conference in which defendants agreed to produce a substantial number
03 of documents, and that they produced said documents on July 15, 2005, after plaintiff filed his
04 Rule 56(f) motion for a continuance. They concede that, at some point in July 2005, plaintiff sent
05 a follow-up letter concerning discovery, but state that, as they are unable to locate the letter in
06 question, it is not clear whether it was sent before or after plaintiff's receipt of their July 15, 2005
07 production. Defendants assert that plaintiff did not raise any concerns regarding the adequacy of
08 the discovery provided during the second thirty-day extension of the discovery deadline, and
09 confirm that they did not provide him with any additional discovery during that time period.

10 Defendants argue that, if plaintiff believed any relevant, material discovery remained
11 outstanding after their July 15, 2005 production, he should have renewed his request after the
12 Court's August 31, 2005 order. They add that there is no indication in the extensive supplemental
13 briefing filed by plaintiff in November 2005 that he required additional discovery to present his
14 arguments, and that it is unclear how additional discovery would help resolve this case.

15 As noted above, in its August 31, 2005 order, the Court found it questionable whether
16 plaintiff had diligently pursued discovery in this matter. Indeed, the very discovery requests at
17 issue had been submitted *after* the conclusion of the discovery deadline then in effect. (See Dkt.
18 99 (setting discovery deadline for June 2, 2005) and Dkt. 151, Ex. 3 at 16 (plaintiff's second
19 request for production of documents dated June 10, 2005.)) However, giving plaintiff the benefit
20 of the doubt, and particularly given the ongoing controversy between the parties regarding
21 deposition procedures (*see* Dkt. 196 at 1-6), the Court granted plaintiff one final extension of the
22 discovery deadline in this matter.

01 Yet, instead of renewing his discovery requests or pursuing discovery by other means, it
02 appears that plaintiff used this time to wait for a response to the discovery requests he had
03 previously submitted in an untimely fashion. In turn, defendants assumed both that their July 15,
04 2005 production was sufficient to meet their discovery obligations and that plaintiff would have
05 renewed his discovery requests had he felt otherwise. Under the circumstances, including the fact
06 of plaintiff's otherwise active and able litigation in this and other matters, the Court finds
07 defendants' assumptions to have been reasonable. Additionally, the Court finds plaintiff's failure
08 to renew his discovery requests or to pursue discovery by other means during this final extension
09 of the discovery deadline to provide further foundation for the conclusion that he has not diligently
10 pursued discovery in this case. This failure argues strongly against what would amount to a third
11 extension of the discovery deadline.

12 Moreover, and critically, the Court concludes that the information sought would not help
13 to resolve this case. Beyond generalizations, plaintiff exclusively stresses the relevance of the
14 documents sought to the issue of the reasons behind the creation of the more restrictive conditions
15 in the RJC's D-Unit. (*See* Dkts. 218-19.) Yet, as reflected in the Report and Recommendation
16 issued as of this date, that issue is not relevant to the resolution of this case. Further, contrary to
17 plaintiff's assertion, it does not appear that the apparent unavailability of at least some of the
18 documents sought in his second set of discovery requests has in any respect hindered plaintiff in
19 litigating this matter. Indeed, plaintiff's numerous filings in this case show that he has had a large
20 volume of documents in his possession pertinent to his claims. (*See, e.g.*, Dkts. 11, 16, 82.)

21 In sum, the Court finds no basis for granting plaintiff's motion. Accordingly, his motion
22 to compel is hereby DENIED. The Clerk is directed to send copies of this Order to plaintiff, to

01 counsel for defendants, and to the Hon. James L. Robart.

02 DATED this 17th day of January, 2005.

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04 Mary Alice Theiler
05 United States Magistrate Judge

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